

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM MASON

Claimant

VS.

STATE OF KANSAS

Respondent,
Self-Insured

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Docket No. 1,011,977

ORDER

Respondent appealed the October 16, 2003 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for a July 5, 2003 accident. The accident occurred as claimant exited a convenience store adjacent to the state park where he worked. Claimant had left the state park and had gone to the convenience store to obtain ice and water for the jug that he kept in the truck that he drove while performing his work duties.

In the October 16, 2003 Order, Judge Avery granted claimant's request for benefits. But respondent contends Judge Avery erred. It argues claimant's accident occurred while claimant was on a personal errand and, therefore, the accident did not arise out of and in the course of his employment with respondent. Accordingly, respondent requests the Board to deny claimant's request for benefits.

Conversely, claimant argues the Board should affirm the preliminary hearing Order. Claimant, however, asserts that he was on duty when the accident occurred and that he was not on break as the Judge concluded. In any event, claimant argues the accident arose out of and in the course of his employment with respondent and, therefore, he is entitled to receive benefits as provided by the Workers Compensation Act.

The only issue before the Board on this appeal is whether claimant's accident arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The preliminary hearing Order should be affirmed. For the reasons below, claimant's July 5, 2003 accident arose out of and in the course of employment with respondent.

Claimant worked for respondent at Clinton State Park where his job was to check tickets on the camping sites and to respond to campers' requests. Respondent provided claimant a truck to drive around the park and a radio to keep in contact with the park office.

On July 5, 2003, claimant fell and injured his shoulder as he exited a convenience store after obtaining ice and water for the jug he kept in his truck. The convenience store was located adjacent to the state park near the park's entrance.

Only those accidents that arise out of and in the course of employment are compensable under the Workers Compensation Act.¹ Before an accident arises out of employment, there must be a causal connection between the accident and the nature, conditions, obligations, or incidents of the employment.²

This court has had occasion many times to consider the phrase "out of" the employment, and has stated that it points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. . . .

This general rule has been elaborated to the effect that an injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury.

An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment. . . .³

¹ See K.S.A. 44-501.

² See *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

³ *Siebert v. Hoch*, 199 Kan. 299, 303-304, 428 P.2d 825 (1967) (citations omitted).

Whether a direct relationship exists between an accident and the nature, conditions, obligations or incidents of the employment is a question of fact to be decided on a case-by-case basis.

The July 5, 2003 accident arose out of claimant's employment with respondent. The accident occurred when claimant was obtaining ice and water that he kept with him while driving through the park performing his assigned duties. This is analogous to a worker sustaining an injury while retrieving a tool believed necessary in his or her work or temporarily discontinuing working to use the restroom. Moreover, the evidence does not indicate that claimant had substantially deviated from his work duties to transform the convenience store trip into a personal errand. Thus, the accident occurred while claimant was performing an activity related to his work. Accordingly, claimant's accident is directly traceable to his employment.

The Judge correctly ruled that claimant's July 5, 2003 accident was compensable under the Workers Compensation Act.

WHEREFORE, the Board affirms the October 16, 2003 Order entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of December 2003.

BOARD MEMBER

c: William W. Hutton, Attorney for Claimant
Marcia L. Yates, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director